REMARKS

Claims 1-26 were in the original PCT application as filed. Applicants have amended claims 3-5, 11-14, 19-23 and 25-26 to delete the multiple dependency and to clarify the claims without prejudice or acquiescence. Claims 8-10 have been canceled without prejudice or acquiescence. Applicants have included a marked up version of the claims as amended herein as Appendix A. For the convenience of the Examiner, Applicants have included in Appendix B a copy of all pending claims as amended herein. Applicants assert that no new matter has been added.

CONCLUSION

Applicants have amended claims 3-5, 11-14, 19-23 and 25-26 to delete the multiple dependency and to clarify the claims without prejudice or acquiescence. Claims 8-10 have been canceled without prejudice or acquiescence. Therefore, these amendments do not narrow the scope of the claims within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd.*, 234 F.3d 558, 586, 56 USPQ2d 1865, 1886 (Fed. Cir. 2000).

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

By _____

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APPENDIX A
VERSION WITH MARKINGS TO SHOW CHANGES MADE

3. (Amended) Microcapsules according to ~~any one of the preceding~~ claims 1, wherein the microcapsules comprise at least one of alginate, acrylic, hydroxyethyl-methyacrylate-methyl-methacrylate, polyphosphazene or agarose.

4. (Amended) Microcapsules according to ~~any one of the preceding~~ claims 1, wherein the microcapsules contain an average of from 1 to 1 x 10^7 cells.

5. (Amended) Microcapsules according to ~~any one of the preceding~~ claims 1, which are the microcapsules are substantially spherical microcapsules or substantially cylindrical microcapsules.

11. (Amended) A pharmaceutical composition comprising microcapsules according to ~~any one of~~ claims 1 ~~to 7~~ and a pharmaceutically acceptable carrier or diluent.

12. (Amended) A method of delivering microcapsules to a host comprising administering microcapsules according to ~~any one of~~ claims 1 ~~to 7~~.

13. (Amended) A method of treating a host suffering from a condition associated with deficient NO production, which method comprises administering ecdysone or an analog thereof to a host which harbours microcapsules as defined in ~~any one of~~ claims 1 ~~to 7~~.

14. (Amended) A product containing microcapsules according to ~~any one of~~ claims 1 ~~to 7~~ and ecdysone or an analog thereof as a combined preparation for simultaneous, separate or sequential sue in the treatment of a condition associated with deficient NO production.

19. (Amended) A polynucleotide construct according to ~~any one of~~ claims 15 ~~to 18~~, wherein the promoter in part (a) comprises a minimal promoter and an element or elements which is/are responsive to ecdysone or an analog thereof.

20. (Amended) A polynucleotide construct according to ~~any one of~~ claims 15 ~~to 18~~, wherein two operator site sequences are present in part (b).

21. (Amended) A vector which incorporates a polynucleotide construct as defined in ~~any one of~~ claims 15 ~~to 20~~.

22. (Amended) A cell which harbours a polynucleotide construct according to ~~any one of~~ claims 15 ~~to 20 or a vector according to claim 21~~.

23. (Amended) A cell according to claim 22 which harbours a construct, wherein the construct comprises a promoter operably linked to a coding sequence, wherein the promoter is responsive to ecdysone or an analog thereof and the coding sequence encodes a nitric oxide synthase (NOS) or a functional variant thereof; ~~as defined in part (a) of claim 15~~ and which is capable of expressing a functional ecdysone receptor.

25. (Amended) A cell according to claim 22 which harbours a construct, wherein the construct comprises a promoter operably linked to one or more tetracycline operator site sequences and a coding sequence in that order, wherein the coding sequence encodes a nitric oxide synthase (NOS) or a functional variant thereof ~~as defined in part (b) of claim 15~~ and which is capable of expressing the tetracycline repressor protein or a functional variant thereof.

26. (Amended) A process for preparing microcapsules comprising encapsulating cells according to ~~any one of~~ claims 22 ~~to 25~~.

APPENDIX B
PENDING CLAIMS AS OF FEBRUARY 11, 2002

1. Microcapsules suitable for administration to a human or animal which microcapsules harbour cells containing a polynucleotide construct, said construct comprising:

(a) a promoter which is responsive to ecdysone or an analog thereof and which is operably linked to a coding sequence for a nitric oxide synthase (NOS) or a functional variant thereof; or

(b) a promoter operably linked to one or more tetracycline operator site sequences and a coding sequence in that order, wherein the coding sequence encodes a nitric oxide synthase (NOS) or a functional variant thereof.

2. Microcapsules according to claim 1, wherein the construct is incorporated into a vector.

3. Microcapsules according to claim 1, wherein the microcapsules comprise at least one of alginate, acrylic, hydroxyethyl-methyacrylate-methyl-methacrylate, polyphosphazene or agarose.

4. Microcapsules according to claim 1, wherein the microcapsules contain an average of from 1 to 1 x 10^7 cells.

5. Microcapsules according to claim 1, which are the microcapsules are substantially spherical microcapsules or substantially cylindrical microcapsules.

6. Microcapsules according to claim 5 which are substantially spherical microcapsules having an average diameter of from 0.01 to 4.0 mm.

7. Microcapsules according to claim 5 which are cylindrical microcapsules having an average length of from 0.1 to 20 mm and an average outer diameter of from 0.1 to 4.0 mm.

11. A pharmaceutical composition comprising microcapsules according to claim 1 and a pharmaceutically acceptable carrier or diluent.

12. A method of delivering microcapsules to a host comprising administering microcapsules according to claim 1.

13. A method of treating a host suffering from a condition associated with deficient NO production, which method comprises administering ecdysone or an analog thereof to a host which harbours microcapsules as defined in claim 1.

14. A product containing microcapsules according to claim 1 and ecdysone or an analog thereof as a combined preparation for simultaneous, separate or sequential sue in the treatment of a condition associated with deficient NO production.

15. A polynucleotide construct comprising:

(a) a promoter operably linked to a coding sequence, wherein the promoter is responsive to ecdysone or an analog thereof and the coding sequence encodes a nitric oxide synthase (NOS) or a functional variant thereof; or

(b) a promoter operably linked to one or more tetracycline operator site sequences and a coding sequence in that order, wherein the coding sequence encodes a nitric oxide synthase (NOS) or a functional variant thereof.

16. A polynucleotide construct according to claim 15, wherein the NOS is human inducible NOS.

17. A polynucleotide construct according to claim 15, wherein the NOS is human neuronal NOS.

18. A polynucleotide construct according to claim 15, wherein the NOS is human endothelial NOS.

19. A polynucleotide construct according to claim 15, wherein the promoter in part (a) comprises a minimal promoter and an element or elements which is/are responsive to ecdysone or an analog thereof.

20. A polynucleotide construct according to claim 15, wherein two operator site sequences are present in part (b).

21. A vector which incorporates a polynucleotide construct as defined in claim 15.

22. A cell which harbours a polynucleotide construct according to claim 15.

23. A cell according to claim 22 which harbours a construct, wherein the construct comprises a promoter operably linked to a coding sequence, wherein the promoter is responsive to ecdysone or an analog thereof and the coding sequence encodes a nitric oxide synthase (NOS) or a functional variant thereof; and which is capable of expressing a functional ecdysone receptor.

24. A cell according to claim 23, wherein the functional ecdysone receptor comprises a heterodimer of the ecdysone receptor (EcR) or functional variant thereof and the human retinoid X receptor (RXR) or functional variant thereof.

25. A cell according to claim 22 which harbours a construct, wherein the construct comprises a promoter operably linked to one or more tetracycline operator site sequences and a coding sequence in that order, wherein the coding sequence encodes a nitric oxide synthase (NOS) or a functional variant thereof and which is capable of expressing the tetracycline repressor protein or a functional variant thereof.

26. A process for preparing microcapsules comprising encapsulating cells according to claim 22.